

TIMOTHY BLOCK,

Complainant,

v.

Chancellor, UNIVERSITY OF
WISCONSIN-MADISON EXTENSION

Respondent.

Case No. 88-0052-PC-ER

DECISION
AND
ORDER

This complaint was filed on April 19, 1988, and alleged that the complainant was discriminated against based on handicap and sex with respect to the decision not to hire the complainant for a position of Program Assistant 1 in December of 1987.

A review of the Commission's file shows the following:

1. On June 8, 1989, the complainant was sent a certified letter (dated June 8th) by a member of the Commission's staff. The letter stated, in part:

On April 21, 1989, I wrote you asking you to contact me, as I needed more information from you before proceeding with an investigation into the above referenced cases [88-0052-PC-ER and 88-0060-PC-ER]. To date, I have had no response from you.

Do you wish to proceed with the complaints? If you do, please simply send the Commission a letter explaining that you wish to pursue the matter. However, your response must be received by the Commission within 20 calendar days of the date of this certified letter. If you fail to respond within the 20 day time period I will recommend the cases be dismissed for lack of prosecution. Pursuant to s.111.39(3), Wis. Stats., which relates to claims filed under the Fair Employment Act:

The (commission) shall dismiss a complaint if the person filing the complaint fails to respond within 20 days to any correspondence from the (commission) concerning the complaint and if the correspondence is sent by certified mail to the last known address of the person. (Emphasis added, in part)

2. On June 29, 1989, the 21st day after June 8th, the Commission received a hand-delivered response from the complainant which indicated that he wished to pursue the instant complaint. The complainant was subsequently provided an opportunity to file arguments as to why the Commission should not dismiss his complaint due to the apparent failure to comply with §111.39(3), Stats.

DISCUSSION

The complainant contends that his response was timely because he filed it with the Commission within 20 days of the date he received the certified letter:

This statute [§111.39(3), Stats] is ambiguous. It does not say whether the twenty days is to be counted from the day the correspondence is sent or from the day the correspondence is received. The clause "...and if the correspondence is sent by certified mail to the last-known address of the person" has nothing to do with the meaning of the phrase "within twenty days", which is at issue here. The phrase "fails to respond within twenty days" is subject to more than one interpretation and is ambiguous.

Additionally, sec. 801.15, Wis. Stats., entitled "Time", sec.(5) reads: "whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by mail, three days shall be added to the prescribed period."

* * *

Furthermore, the commission's interpretation of sec. 111.39(3) is in direct conflict with sec. 111.31 entitled "Declaration of Policy" of the Fair Employment act. Sec. 111.31(3) states that ... "it is declared to be the public policy of the State to encourage and foster to the fullest extent practicable the employment of all properly qualified individuals regardless of...handicap,...sex,...This subchapter shall be liberally construed for the accomplishment of this purpose".

The Commission has previously ruled that the 20 day time period commences on the date the letter is sent rather than on the date of receipt by the complainant. Jackson v. DHSS, 87-0149-PC-ER, 3/10/88; Billingsley v. DOR, 87-

0132-PC-ER, 7/13/88. In support of its ruling the Commission noted that a contrary result would permit a complainant to keep a case open indefinitely by simply refusing to accept any certified mail sent them by the Commission.

The language of §111.39(3), Stats., makes it clear that the Commission is not required to actually serve a complainant with notice before a complaint can be dismissed for lack of prosecution. Complaints may be dismissed if the complainant moves away and fails to provide a new address so that correspondence is returned as undeliverable.¹ The subsection would have referred to service of the letter on the complainant or to receipt of the letter if such a requirement had been intended. The statute also makes it clear that there is a responsibility on the part of the complainant to keep the Commission informed of any changes of address. The Commission cannot conclude that the statute is ambiguous as contended by the complainant.

The Commission's interpretation is consistent with the Commission's own rules which provide:

Papers may be served either personally or by mail. Service by mail is complete upon mailing. That is, for purposes of service, the effective date is the date of mailing, not receipt. Filing is complete on receipt. §PC 1.05(2), Wis. Adm. Code

The complainant's reference to §801.15, Stats., is inappropriate given the more specific language of §111.39(3), Stats., the Commission's rules, and the reference in §801.15, Stats., to actions in court as compared to administrative proceedings. The liberal construction provision found in §111.31(3), Stats., does not come into play because of the more specific language found elsewhere in the Fair Employment Act. It should also be noted that the certified letter to the complainant specifically stated that the 20 day period commenced on the date of the letter.

¹This was precisely the factual situation in Moss v. DNR, 87-0028-PC-ER, 1/13/88. In Moss, the complainant's case was dismissed on December 3rd for lack of prosecution where the Commission never received a response to an October 6th letter requesting certain additional information and the Commission's November 9th certified letter to the complainant was returned unclaimed and, as a consequence, complainant failed to respond within the 20 day statutory time period. The complainant's petition for rehearing was denied.

Because the complainant's response was not received by the Commission within the statutory time period, the Commission enters the following

ORDER

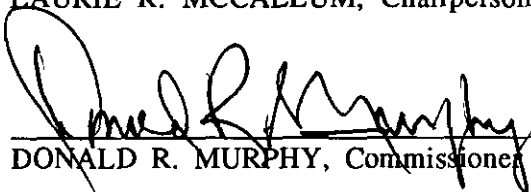
This matter is dismissed for lack of prosecution.

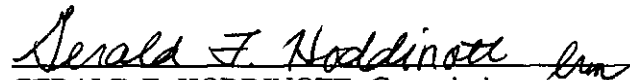
Dated: July 27, 1989

STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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